

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0133P

Gross Income Tax

Fiscal Years Ending 09/30/94, 09/30/95, and 09/30/96

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, located out of state, was audited for fiscal years ending 09/30/94, 09/30/95, and 09/30/96. Upon audit it was discovered that the taxpayer failed to report proceeds from the sale of assets and sales to customers where the buyer picked up the goods in Indiana. The pick up sales was the major issue in the audit and was also an issue in the prior audit completed on November 15, 1995.

Taxpayer requests that the department waive the negligence penalty.

I. **Tax Administration** – Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty because it failed to report taxable gross income from pick up sales in Indiana.

Taxpayer, in a letter dated March 5, 1999 protested penalties assessed and states it has reasonable cause for failing to report gross income. At the time of preparing the gross income tax section of the

corporation income tax returns, it had no reason to doubt that the sales information pertaining to SR was accurate, therefore, the gross income tax was calculated using the best information available at that time.

It had no way of knowing at the time of preparing the returns, that SR's sales information would change in the future due to adjustments associated with a sales tax audit that created deficiencies in its gross income tax calculations. Consequently, the deficiencies to the gross income tax calculated in the past were brought about by events that happened in the future and not by willful neglect on its part. Considering the definition of reasonable cause, taxpayer requests abatement of the penalty due to circumstances beyond its control.

The audit covering three years indicates that sales picked up in Indiana were not included in the gross income tax calculation at the low rate. Taxpayer's argument that it had no reason to doubt that the sales information pertaining to SR was accurate, is not reasonable cause as the same issue was present in the prior audit.

FINDING

Taxpayer's protest is denied.